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13 (now known as APPLIED BIOSYSTEMS, INC.)

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 MEGAN KELLY,

18 Plaintiff,

19 v.

20 APPLERA CORPORATION,

21 Defendant.

Case No. C-07-3002 MMC

**DEFENDANT'S REPLY TO PLAINTIFF'S
OBJECTION TO APPLERA'S OPPOSITION
TO PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Date: July 25, 2008
Time: 9:00 a.m.
Courtroom: 7, 19th floor
Judge: Hon. Maxine M. Chesney

22 In her Objection to Defendant Applera Corporation's¹ Opposition to Motion for
23 Partial Summary Judgment, Plaintiff Megan Kelly miscalculates the date by which Defendant was
24 required to file its Opposition to her Motion for Partial Summary Judgment. On Friday, June 20,
25 2008, Plaintiff noticed a July 28, 2008 hearing date for her motion. On Monday, June 23, 2008,
26 Plaintiff filed a Re-Notice of Motion, noticing a hearing date of July 25, 2008 (attached as Exhibit A
27 for the Court's reference).

28 Local Rule 7-3(a) requires that "Any opposition to a motion must be served and filed
not less than 21 days before the hearing date." Based upon Plaintiff's re-noticed hearing date of July
25, 2008, the date by which Defendant was required to file its Opposition was July 4, 2008, a Legal

¹ Applera Corporation is now known as Applied Biosystems, Inc.

Holiday. Rule 6(a)(4) of the Federal Rules of Civil Procedure defines “legal holiday” as “the day set aside by statute for observing New Year’s Day, Martin Luther King Jr.’s Birthday, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, or Christmas Day; and (B) any other day declared a holiday by the President, Congress, or the state where the district court is located.” Rule 6(a)(3) of the Federal Rules of Civil Procedure instructs a party to “Include the last day of the period unless it is a Saturday, Sunday, legal holiday, or—if the act to be done is filing a paper in court—a day on which weather or other conditions make the clerk’s office inaccessible. When the last day is excluded, the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or day when the clerk’s office is inaccessible.”

Thus, because Plaintiff re-noticed a hearing date of July 25, 2008, resulting in the last day of the 21-day period being a “legal holiday,” the last day of the period became July 7, 2008. This is the date on which Defendant filed its Opposition. Accordingly, Plaintiff’s “Objection to Applera’s Late-Filed Opposition to Motion for Partial Summary Judgment” is in error.

Dated: July 11, 2008

/s/

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